IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.354 OF 2003

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Kalpana S. Bhesania ...Petitioner

v/s.

Eldorado Guarantees Ltd. ...Respondent

...

Mr.M.S.Doctor i/b Hariani & Co. for the Petitioner.

None for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 16TH MARCH,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the arbitral tribunal of the Bombay

Stock Exchange.

2. I have heard the learned Counsel appearing for the Petitioner at length. The award reveals that though the Respondent was not appearing before the arbitral tribunal, the arbitral tribunal has gone through the record produced by the Petitioner, as also they have called for record from the Stock Exchange. So far as claim in relation to the amount of Rs.3,50,000/- supposed to have been paid by the Petitioner to the Respondent is concerned, as a fact the arbitral tribunal has found that this payment cannot be said to be payment made towards the transaction of sale and purchase of shares. This finding has been recorded by the arbitral tribunal, which is a trade body, on the basis of their experience and the conduct of the Petitioner. The arbitral tribunal has held that the conduct of the Petitioner of depositing the amount in advance without having transaction in shares for months together indicates that this was not amount deposited towards any transaction of shares. Obviously, therefore, the proceedings for recovery of that amount would not be within jurisdiction of the arbitral tribunal. So far as transactions of sale of

750 shares of Hindalco are concerned, in my opinion, the arbitral tribunal has rightly rejected the claim in the absence of any signed contract note. Even in the absence of signature on the contract note an inference of a contract can be drawn, if the transaction is otherwise established. The transaction which is shown on record is a transaction to which some other person namely Mr.Soly Bhesania is a party. Therefore, the record does not establish existence of transaction between the Respondent and the Petitioner and therefore, the arbitral tribunal has rejected the claim. I find that the findings recorded by the arbitral tribunal are essentially findings of fact for which material is available on record, considering the extremely limited jurisdiction of this Court under Section 34 of the Arbitration Act to disturb the findings of fact, especially the findings which are recorded by the arbitral tribunal of a trade body, it will not be appropriate to disturb the award. It is to be noted that the members of the arbitral tribunal constituted by the trade body have experience of trade and dealings.

3. Petition is, therefore, disposed of.

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